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6 **BEFORE THE**  
7 **BOARD OF PHARMACY**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Agency Case No. 6234

11 **LTC GEARY PHARMACY**  
12 **5427 Geary Blvd.**  
13 **San Francisco, CA 94121**  
14 **Pharmacy License No. PHY 46142**

**A C C U S A T I O N**

15 **BRANDON RUSSELL CARR**  
16 **541 Steiner Street #4**  
17 **San Francisco, CA 94117**  
18 **Pharmacist License No. RPH 59724**

19 **FANNY YAN**  
20 **1825 Santiago Street**  
21 **San Francisco, CA 94116**  
22 **Pharmacist License No. RPH 69701**

23 **JOHN LOONG-CHEONG LEE**  
24 **25 McLaren Avenue**  
25 **San Francisco, CA 94121**  
26 **Pharmacist License No. RPH 29855**

27 **TERRANCE WILFRED JOSEPH CHAN**  
28 **821 Hawthorne Way**  
29 **Millbrae, CA 94030**  
30 **Pharmacist License No. RPH 30987**

31 **NELLY MERZHERITSKY**  
32 **5427 Geary Blvd.**  
33 **San Francisco, CA 94121**  
34 **Pharmacy Technician Lic. No. TCH 54417**

35 **YELENA REZNIK**  
36 **2593 23<sup>rd</sup> Avenue #303**  
37 **San Francisco, CA 94116**  
38 **Pharmacy Technician Lic. No. TCH 36890**

Respondents.

1 Complainant alleges:

2 PARTIES

3 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
4 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

5 2. On or about October 15, 2002, the Board issued Pharmacy License Number PHY  
6 46142 to LTC Geary Pharmacy (Respondent Pharmacy). The Pharmacy License was in full force  
7 and effect at all times relevant to the charges brought herein and expired on October 1, 2017, and  
8 was thereafter canceled on October 2, 2017.

9 3. On or about July 6, 2007, the Board issued Pharmacist License No. RPH 59724 to  
10 Brandon Russell Carr (Respondent Carr). The Pharmacist License was in full force and effect at  
11 all times relevant to the charges brought herein and will expire on May 31, 2019, unless renewed.

12 4. On or about September 5, 2013, the Board issued Pharmacist License No. RPH 69701  
13 to Fanny Yan (Respondent Yan). The Pharmacist License was in full force and effect at all times  
14 relevant to the charges brought herein and will expire on May 31, 2019, unless renewed.  
15 Respondent Yan was a Pharmacist-in-Charge at Respondent Pharmacy from November 10, 2014  
16 through July 27, 2015.

17 5. On or about August 15, 1975, the Board issued Pharmacist License No. RPH 29855  
18 to John Loong-Cheong Lee (Respondent Lee). The Pharmacist License was in full force and  
19 effect at all times relevant to the charges brought herein and will expire on September 30, 2018,  
20 unless renewed. Respondent Lee was a Pharmacist-in-Charge at Respondent Pharmacy from  
21 August 24, 2015 through February 20, 2017.

22 6. On or about July 28, 1977, the Board issued Pharmacist License No. RPH 30987 to  
23 Terence Wilfred Joseph Chan (Respondent Chan). The Pharmacist License was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on November 30, 2019,  
25 unless renewed.

26 7. On or about February 13, 2004, the Board issued Pharmacy Technician License No.  
27 TCH 54417 to Nelly Merzheritsky (Respondent Merzheritsky). The Pharmacy Technician  
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1 License was in full force and effect at all times relevant to the charges brought herein and will  
2 expire on August 31, 2019, unless renewed.

3 8. On or about March 20, 2001, the Board issued Pharmacy Technician License No.  
4 TCH 36890 to Yelena Reznik (Respondent Reznik). The Pharmacy Technician License was in  
5 full force and effect at all times relevant to the charges brought herein and will expire on  
6 December 31, 2018, unless renewed.

### 7 JURISDICTION

8 9. This Accusation is brought before the Board under the authority of the following  
9 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
10 indicated.

11 10. Code section 4011 provides that the Board shall administer and enforce both the  
12 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act  
13 [Health & Safety Code, § 11000 et seq.].

14 11. Code section 4300, subdivision (a), provides that every license issued by the Board  
15 may be suspended or revoked.

16 12. Code section 4300.1 provides that the expiration, cancellation, forfeiture, suspension,  
17 or voluntary surrender of a license "shall not deprive the board of jurisdiction to commence or  
18 proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to  
19 render a decision suspending or revoking the license."

20 13. Code section 4307, subdivision (a), states:

21 (a) Any person who has been denied a license or whose license has been revoked or is  
22 under suspension, or who has failed to renew his or her license while it was under  
23 suspension, or who has been a manager, administrator, owner, member, officer,  
24 director, associate, partner, or any other person with management or control of any  
25 partnership, corporation, trust, firm, or association whose application for a license has  
26 been denied or revoked, is under suspension or has been placed on probation, and  
27 while acting as the manager, administrator, owner, member, officer, director,  
28 associate, partner, or any other person with management or control had knowledge of  
or knowingly participated in any conduct for which the license was denied, revoked,  
suspended, or placed on probation, shall be prohibited from serving as a manager,  
administrator, owner, member, officer, director, associate, partner, or in any other  
position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on  
probation, this prohibition shall remain in effect for a period not to exceed five years.

1 (2) Where the license is denied or revoked, the prohibition shall continue until the  
2 license is issued or reinstated.

### 3 STATUTORY PROVISIONS

4 14. Code section 4076, subdivision (a)(6), states:

5 (a) A pharmacist shall not dispense any prescription except in a container that meets the  
6 requirements of state and federal law and is correctly labeled with all of the following:

7 (6) The name and address of the pharmacy, and prescription number or other  
8 means of identifying the prescription.

9 15. Code section 4081, subdivision (a), states, in pertinent part:

10 All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of  
11 dangerous drugs or dangerous devices shall be at all times during business hours open to  
12 inspection by authorized officers of the law, and shall be preserved for at least three years from  
13 the date of making. A current inventory shall be kept by every pharmacy or establishment  
14 holding a currently valid and unrevoked certificate, license, permit, or registration.

15 16. Code section 4101, subdivision (a), states:

16 (a) A pharmacist may take charge of and act as the pharmacist-in-charge of a pharmacy  
17 upon application by the pharmacy and approval by the board. A pharmacist-in-charge who ceases  
18 to act as the pharmacist-in-charge of the pharmacy shall notify the board in writing within 30  
19 days of the date of that change in status.

20 17. Code section 4105, subdivisions (a) and (c) state:

21 (a) All records or other documentation of the acquisition and disposition of dangerous  
22 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed  
23 premises in a readily retrievable form.

24 (c) The records required by this section shall be retained on the licensed premises for a  
25 period of three years from the date of making.

26 18. Code section 4113, subdivision (c), states:

27 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all  
28 state and federal laws and regulations pertaining to the practice of pharmacy.

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19. Code section 4160, subdivision (a), states:

(a) A person shall not act as a wholesaler or third-party logistics provider of any dangerous drug or dangerous device unless he or she has obtained a license from the board.

20. Code section 4169, subdivision (a) (1-5) states:

(a) A person or entity shall not do any of the following:

(1) Purchase, trade, sell, warehouse, distribute, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler, third-party logistics provider, or pharmacy.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

21. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(b) Incompetence.

(c) Gross negligence.

...

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1 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
3 whether the act is a felony or misdemeanor or not.

4 (g) Knowingly making or signing any certificate or other document that falsely  
5 represents the existence or nonexistence of a state of facts.

6 ...

7 (j) The violation of any of the statutes of this state, of any other state, or of the United  
8 States regulated controlled substances and dangerous drugs.

9 ...

10 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
11 violation or conspiring to violate any provision or term of this chapter or of the applicable federal  
12 and state laws and regulations governing pharmacy, including regulations established by the  
13 board or by any other state or federal regulatory agency.

14 (q) Engaging in any conduct that subverts or attempts to subvert an investigation of  
15 the board.

16 ...

17 22. Code section 4305, subdivision (b), provides, in pertinent part, that operation of a  
18 pharmacy for more than 30 days without supervision or management of a pharmacist-in-charge  
19 shall constitute grounds for disciplinary action.

20 23. Code section 4306.5, subdivision (a), provides, in pertinent part, that unprofessional  
21 conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the  
22 inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or  
23 not the act or omission arises in the course of the practice of pharmacy or the ownership,  
24 management, administration, or operation of a pharmacy or other entity licensed by the board.

25 24. Civil Code section 56.10, subdivision (a), states:

26 (a) A provider of health care, health care service plan, or contractor shall not disclose  
27 medical information regarding a patient of the provider of health care or an enrollee or subscriber  
28

1 of a health care service plan without first obtaining an authorization, except as provided in  
2 subdivision (b) or (c).

3 25. Health & Safety Code section 11165, subdivision (d), states, in pertinent part:

4 (d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled  
5 substance, as defined in the controlled substances schedules in federal law and regulations, the  
6 dispensing pharmacy, clinic, or other dispenser shall report to the Department of Justice as soon  
7 as reasonably possible, but not more than seven days after the date a controlled substance is  
8 dispensed, in a format specified by the Department of Justice.

9 26. Health & Safety Code section 111250, states: Any drug or device is adulterated if it  
10 consists, in whole or in part, of any filthy, putrid, or decomposed substance.

11 27. Health & Safety Code section 111255, states: Any drug or device is adulterated if it  
12 has been produced, prepared, packed, or held under conditions whereby it may have been  
13 contaminated with filth, or whereby it may have been rendered injurious to health.

14 28. Health & Safety Code section 111295, states: It is unlawful for any person to  
15 manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated.

16 29. Health & Safety Code section 111330, states: Any drug or device is misbranded if its  
17 labeling is false or misleading in any particular.

18 30. Health & Safety Code section 111335, states: Any drug or device is misbranded if its  
19 labeling or packaging does not conform to the requirements of Chapter 4 (commencing with  
20 Section 110290).

21 31. Health & Safety Code section 111440, states: It is unlawful for any person to  
22 manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded.

#### 23 REGULATORY PROVISIONS

24 32. California Code of Regulations, title 16, section 1711, states in pertinent part:

25 ...

26 (d) Each pharmacy shall use the findings of its quality assurance program to develop  
27 pharmacy systems and workflow processes designed to prevent medication errors. An  
28 investigation of each medication error shall commence as soon as is reasonably possible, but no

1 later than 2 business days from the date the medication error is discovered. All medication errors  
2 discovered shall be subject to a quality assurance review.

3 (e) The primary purpose of the quality assurance review shall be to advance error  
4 prevention by analyzing, individually and collectively, investigative and other pertinent data  
5 collected in response to a medication error to assess the cause and any contributing factors such  
6 as system or process failures. A record of the quality assurance review shall be immediately  
7 retrievable in the pharmacy. The record shall contain at least the following:

- 8 1. the date, location, and participants in the quality assurance review;
- 9 2. the pertinent data and other information relating to the medication error(s)  
10 reviewed and documentation of any patient contact required by subdivision (c);
- 11 3. the findings and determinations generated by the quality assurance review; and,
- 12 4. recommend changes to pharmacy policy, procedure, systems, or processes, if any.

13 The pharmacy shall inform pharmacy personnel of changes to pharmacy policy, procedure,  
14 systems, or processes made as a result of recommendations generated in the quality assurance  
15 program.

16 (f) The record of the quality assurance review, as provided in subdivision (e) shall be  
17 immediately retrievable in the pharmacy for at least one year from the date the record was  
18 created.

19 ...

20 33. California Code of Regulations, title 16, section 1715, states in pertinent part:

21 (a) The pharmacist-in-charge of each pharmacy shall complete a self-assessment of the  
22 pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed  
23 before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to  
24 promote compliance through self-examination and education.

25 (b) In addition to the self-assessment required in subdivision (a) of this section, the  
26 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

27 ...



(2) There is a change in the pharmacist-in-charge, and he or she becomes the new pharmacist-in-charge of a pharmacy.

• • •

34. California Code of Regulations, title 16, section 1716, states: Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code. Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

35. California Code of Regulations, title 16, section 1718, states: "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

36. California Code of Regulations, title 16, section 1793.7, states in pertinent part:

• • •

(b) Pharmacy technicians must work under the direct supervision of a pharmacist and in such a relationship that the supervising pharmacist is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

• • •

(e) A pharmacist shall be responsible for all activities of pharmacy technicians to ensure that all such activities are performed completely, safely and without risk of harm to patients.

• • •

## COST RECOVERY

37. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 FACTUAL BACKGROUND

2 38. Respondent Pharmacy, located in San Francisco, California, engaged in billing fraud,  
3 drug take-back for reuse, maintained expired drugs in its current inventory, failed to maintain  
4 adequate records, and failed to ensure compliance with applicable laws as described below.

5 39. The investigation in this matter initiated on or about June 4, 2015. Respondent Yan  
6 was the pharmacist-in-charge at Respondent Pharmacy from November 10, 2014 through July 27,  
7 2015. Respondent Lee was the pharmacist-in-charge from August 24, 2015 through February 20,  
8 2017. The next pharmacist-in-charge, Mr. Reddy, did not begin as pharmacist-in-charge at  
9 Respondent Pharmacy until April 13, 2017.

10 40. On August 6, 2015 investigator Shafir conducted an inspection at Respondent  
11 Pharmacy, and on March 16, 2017, investigator Shafir returned to Respondent Pharmacy with  
12 investigator Krumer, a Russian-speaking investigator, for a follow-up investigation. The  
13 following violations of California Pharmacy Law were identified and substantiated:

14 a. Respondent Pharmacy was in possession of numerous quantities of expired and  
15 unused returned bubble-cards, drug samples, drugs in plastic bags without expiration dates or lot  
16 numbers, and prescription vials from other pharmacies, without retaining any records of  
17 acquisition of these drugs. These drugs were found in Respondent Pharmacy's dispensing area.  
18 Board audits following the 2015 and 2017 inspections of Respondent Pharmacy showed variances  
19 totaling 44,154 tablets with unaccounted acquisition and disposition records.

20 b. Respondent Pharmacy took back expired and unused returned bubble-cards from  
21 various skilled nursing and assisted-living facilities, totaling 465 bubble cards, for destruction.  
22 Respondent Pharmacy was instructed to stop taking back medications after the August 2015  
23 investigation, and was instructed on the requirements for obtaining a wholesaler's permit to act as  
24 a reverse distributor. The subsequent 2017 investigation revealed that Respondent Pharmacy  
25 continued to engage in taking back medications after the 2015 investigation.

26 c. Expired drugs were found in Respondent Pharmacy's current inventory at the August  
27 2015 inspection, although Respondent Pharmacy had been instructed subsequent to an earlier  
28 December 20, 2013, inspection to ensure expired drugs were not stored in the current inventory.

1 Expired drugs were again found in Respondent Pharmacy's current inventory at the 2017  
2 investigation.

3 d. During the 2017 inspection, investigators found 23 plastic bags containing dangerous  
4 drugs without expiration dates or lot numbers in Respondent Pharmacy.

5 e. Respondent Pharmacy was reusing adulterated and/or misbranded drugs for patient  
6 dispensing.

7 f. 21 discarded, empty bubble cards and labels taken back from facilities Respondent  
8 Pharmacy serviced were found in the trash during the 2015 inspection. Respondent Pharmacy  
9 failed to reverse the insurance billing for these delivered medications, and reused the medications  
10 for dispensing again to different patients. Pharmacy Technicians engaged in reusing returned and  
11 expired medications in the back room of the pharmacy, without appropriate supervision by a  
12 pharmacist.

13 g. On June 17, 2015, Respondent Pharmacy filled prescription RX#N1352749 with  
14 morphine sulfate 15mg tablets, instead of the prescribed morphine sulfate 30mg tablets, without  
15 consent from the prescriber.

16 h. Respondent Pharmacy failed to complete a quality-assurance review within 2 days  
17 following a medication error described above pertaining to prescription RX#N1352749, and  
18 failed to maintain a record of the quality-assurance review for a period of one year. Respondent  
19 Pharmacy was previously educated and issued a correction on the policy and procedures for the  
20 quality-assurance program after the December 20, 2013, inspection.

21 i. Between August 1, 2012, and August 19, 2015, Respondent Pharmacy failed to  
22 transmit the dispensed controlled-substance prescription data to the Department of Justice's  
23 Controlled Substance Utilization Review and Evaluation System (CURES) on a weekly basis.

24 j. At the 2017 inspection, a Board inspector found patient confidential medical  
25 information in the garbage cans outside Respondent Pharmacy.

26 k. At the 2017 inspection, Respondent Pharmacy failed to have in its records a current  
27 biennial inventory of controlled substances. The last complete DEA inventory of controlled  
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1 substances was conducted on November 3, 2014, and only a partial inventory for controlled  
2 substances was done on October 10, 2016.

3 l. From about December 20, 2013, through August 6, 2015, Respondent Pharmacy  
4 dispensed prescriptions under the name "LTC Geary Pharmacy," when the Board records during  
5 this period showed the name to be "Geary Pharmacy."

6 m. Respondent Yan did not notify the Board she ceased being the pharmacist-in-charge  
7 until she was instructed to do so by inspectors on or about October 22, 2015, more than 30 days  
8 of her last day as pharmacist-in-charge at Respondent Pharmacy, July 27, 2015.

9 n. Respondent Lee did not have or maintain a record of a self-assessment of Respondent  
10 Pharmacy that he was required to conduct within 30 days of becoming the pharmacist-in-charge  
11 on August 24, 2015. Respondent Lee could only produce a self-assessment completed on  
12 February 14, 2017.

13 o. Respondent Merzheritsky provided false information to the inspector on August 6,  
14 2015, when she gave a false name of the new pharmacist-in-charge.

15 p. Respondent Reznik, during the 2015 inspection, provided false information regarding  
16 the 21 bubble cards found in the trash. Further, during the 2017 inspection, Respondent Reznik  
17 engaged in concealing expired drug samples, prescription vials/bubble cards from various other  
18 pharmacies, and the 23 plastic bags containing dangerous drugs without any expiration dates or  
19 lot numbers. Respondent Reznik provided false information regarding the presence of these  
20 drugs in the pharmacy dispensing area. Respondent Reznik told someone on the phone, in  
21 Russian, in the presence of investigator Krumer, that she "did what she could" regarding the 2017  
22 inspection.

23 41. Respondent Pharmacy's retail pharmacy license was canceled effective on or about  
24 July 15, 2017.

#### 25 FIRST CAUSE FOR DISCIPLINE

26 (Failure to Maintain Records of Acquisition and Disposition of Medications)

27 42. Respondent Pharmacy, Respondent Yan, and Respondent Lee are subject to  
28 disciplinary action under Code section(s) 4301(j) and/or (o), 4081(a), 4105 (a) and/or (c), and/or

1 4113(c), for failure to maintain records of sale, acquisition, receipt, shipment, or disposition of  
2 dangerous drugs or dangerous devices, and/or failure to maintain such records for at least three  
3 years from the date of making the records, as described above in paragraphs 39 and 40(a), and  
4 herein incorporated.

## 5 SECOND CAUSE FOR DISCIPLINE

### 6 (Unlicensed Wholesaler Activity)

7 43. Respondent Pharmacy, Respondent Yan, and Respondent Lee are subject to  
8 disciplinary action under Code section(s) 4301(j) and/or (o), 4160(a), and/or 4113(c), for acting  
9 as a reverse distributor by taking back expired and unused bubble cards from various skilled-  
10 nursing and assisted-living facilities, as described above in paragraphs 39, 40(a), and 40(b), and  
11 herein incorporated.

## 12 THIRD CAUSE FOR DISCIPLINE

### 13 (Adulterated Drugs)

14 44. Respondent Pharmacy, Respondent Yan, and Respondent Lee are subject to  
15 disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or Health and Safety  
16 Code sections 11250, 111255, and/or 111295, for maintaining in the current inventory expired  
17 drugs, drugs in plastic bags without expiration dates or lot numbers, and prescription vials from  
18 other pharmacies in the dispensing area, as described above in paragraphs 39, 40(a), 40(c), 40(d),  
19 40(e), 40(f), and/or 40(p), and incorporated herein.

## 20 FOURTH CAUSE FOR DISCIPLINE

### 21 (Misbranded Drugs)

22 45. Respondent Pharmacy and Respondent Lee are subject to disciplinary action under  
23 Code section(s) 4301(j) and/or (o), 4113(c), and/or Health and Safety Code sections 111330,  
24 111440, and/or 111335, for improperly maintaining 23 plastic bags containing dangerous drugs  
25 without expiration dates or lot numbers in Respondent Pharmacy, as discovered during the 2017  
26 inspection, and as described above in paragraphs 39, 40(a), 40(c), and/or 40(d), and incorporated  
27 herein.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Reusing Adulterated/Misbranded Drugs for Patient Dispensing)

3 46. Respondent Pharmacy, Respondent Yan and Respondent Lee are subject to  
4 disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or 4169(a)(1-5), for  
5 maintaining numerous boxes with expired and unused bubble cards transferred to the pharmacy  
6 for destruction from facilities not licensed by the Board, and for reusing these adulterated and/or  
7 misbranded drugs for patient dispensing, as described above in paragraphs 39, 40(a), 40(b), 40(c),  
8 40(d), 40(e), and/or 40(f), and incorporated herein.

9 SIXTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct-Adulterated/Misbranded Drugs in Current Inventory)

11 47. Respondent Pharmacy, Respondent Yan, and Respondent Lee are subject to  
12 disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or 4301(b), (c), and/or  
13 (f), for unprofessional conduct for failure to quarantine expired drugs from current inventory,  
14 and/or for maintaining expired drug samples, drugs in plastic bags without expiration dates or lot  
15 numbers, and/or prescription vials from other pharmacies in Respondent Pharmacy's dispensing  
16 area, and for dispensing adulterated drugs, as described above in paragraphs 39, 40(a), 40(b),  
17 40(c), 40(d), 40(e), and/or 40(f), and incorporated herein.

18 SEVENTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct-Insurance Fraud and Dispensing Adulterated/Misbranded Drugs)

20 48. Respondent Pharmacy is subject to disciplinary action under Code section(s) 4301(j)  
21 and/or (o), and/or 4301(b), (c), and/or (f), for unprofessional conduct, where 21 discarded bubble  
22 cards and labels were located in the trash on August 6, 2015, records indicate that Respondent  
23 Pharmacy did not reverse the insurance billing, and Respondent Pharmacy reused the medication  
24 to fill new prescriptions, as described above in paragraphs 39, 40(e), and/or 40(f), and  
25 incorporated herein.

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EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Omission of Supervision by Pharmacist)

49. Respondent Yan, Respondent Lee, and Respondent Chan are subject to disciplinary action under Code section(s) 4301(j) and/or (o), and/or 4306.5(a), for failure to use professional judgment and the inappropriate exercise of their education, training, or experience as pharmacists. Specifically, as described above in paragraphs 39, 40(a), 40(b), 40(c), 40(e), and/or 40(f), Respondents Yan, Lee, and Chan failed to supervise activities of pharmacy staff who were engaged in taking back expired and unused bubble cards intended for destruction, and reusing them for patient dispensing.

NINTH CAUSE FOR DISCIPLINE

(Variation from Prescription and Failure to Complete Quality Assurance Review)

50. Respondent Pharmacy and Respondent Yan are subject to disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or California Code of Regulations, title 16, section 1716, for filling prescription RX#N1352749 on or about June 17, 2015, with the wrong medication, as described above in paragraphs 39 and 40(g), and incorporated herein. Respondents Pharmacy and Yan are further subject to disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or California Code of Regulations, title 16, section 1711(d) and (e), for failure to develop pharmacy systems and workflow processes designed to prevent medication errors, and for failing to comply with the quality assurance program, as described above in paragraphs 39 and 40(h), and incorporated herein.

TENTH CAUSE FOR DISCIPLINE

(Failure to Report CURES Data)

51. Respondent Pharmacy and Respondent Yan are subject to disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or Health and Safety Code section 11165(d), for failure to transmit the dispensed controlled substance prescriptions data to CURES on a weekly basis, as described above in paragraphs 39 and 40(i), and incorporated herein.

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1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Failure to Maintain Confidentiality of Patient Information)

3 52. Respondent Pharmacy and Respondent Lee are subject to disciplinary action under  
4 Code section(s) 4301(j) and/or (o), 4113(c), and/or Civil Code section 56.10(a), for failure to  
5 maintain the confidentiality of patient medical information, as described above in paragraphs 39  
6 and 40(j), and incorporated herein.

7 TWELFTH CAUSE FOR DISCIPLINE

8 (Failure to Maintain Controlled Substance Inventory)

9 53. Respondent Pharmacy and Respondent Lee are subject to disciplinary action under  
10 Code section(s) 4301(j) and/or (o), 4113(c), and/or California Code of Regulations, title 16,  
11 section 1718, for failure to complete a DEA biennial inventory of dangerous drugs and controlled  
12 substances, and for failing to maintain records of the DEA biennial inventory for a period of three  
13 years, as described above in paragraphs 39 and 40(k), and incorporated herein.

14 THIRTEENTH CAUSE FOR DISCIPLINE

15 (Inaccurate Prescription Container Labeling)

16 54. Respondent Pharmacy and Respondent Yan are subject to disciplinary action under  
17 Code section(s) 4301(j) and/or (o), 4113(c), and/or Code section 4076(a)(6), for dispensing  
18 prescriptions in improperly labeled containers, and for failing to notify the Board of the pharmacy  
19 name change within 30 days, as described above in paragraphs 39 and 40(l).

20 FOURTEENTH CAUSE FOR DISCIPLINE

21 (Failure of Pharmacist to Supervise Pharmacy Technicians)

22 55. Respondent Yan, Respondent Lee, Respondent Chan, and Respondent Carr are  
23 subject to disciplinary action under Code section(s) 4301(j) and/or (o), 4113(c), and/or California  
24 Code of Regulations, title 16, section 1793.7(b) and/or (e), for failure to supervise pharmacy  
25 technicians at Respondent Pharmacy. Respondents Yan, Lee, Chan, and Carr were not fully  
26 aware of all activities involved in the dispensing of medications, and were responsible for the  
27 actions of the pharmacy technicians, as described above in paragraphs 39, 40(a), 40(b), 40(c),  
28 40(d), 40(e), 40(f), and/or 40(j), and incorporated herein.



1 FIFTEENTH CAUSE FOR DISCIPLINE

2 (Respondent Yan-Failure to Notify Board of Change in Status as Pharmacist-in-Charge)

3 56. Respondent Yan is subject to disciplinary action under Code section(s) 4301(j) and/or  
4 (o), 4101(a), and/or 4113(c) for failure to notify the Board that she ceased her role as pharmacist-  
5 in-charge at Respondent Pharmacy within 30 days of her last day, as described above in  
6 paragraphs 39 and 40(m), and incorporated herein.

7 SIXTEENTH CAUSE FOR DISCIPLINE

8 (Respondent Lee-Failure to Complete Self-Assessment by Pharmacist-in-Charge)

9 57. Respondent Lee is subject to disciplinary action under Code section(s) 4301(j) and/or  
10 (o), 4113(c), and/or California Code of Regulations, title 16, section 1715(b)(2), for failure to  
11 complete and/or maintain a self-assessment within 30 days of him becoming pharmacist-in-  
12 charge of Respondent Pharmacy on August 24, 2015, as described above in paragraphs 39 and  
13 40(n), and incorporated herein.

14 SEVENTEENTH CAUSE FOR DISCIPLINE

15 (Respondent Lee-Unprofessional Conduct)

16 58. Respondent Lee is subject to disciplinary action under Code section(s) 4301(j) and/or  
17 (o), 4113(c), and/or 4301(g) and/or (q), for providing false information regarding the presence of  
18 expired drug samples, prescription vials/bubble cards from various other pharmacies, and 23  
19 plastic bags containing dangerous drugs without any expiration dates or lot numbers found in  
20 Respondent Pharmacy's dispensing area during the 2017 inspection, as described above in  
21 paragraphs 40(a), 40(b), 40(c), and 40(d), and incorporated herein.

22 EIGHTEENTH CAUSE FOR DISCIPLINE

23 (Respondent Pharmacy-Operation of Pharmacy without Pharmacist-in-Charge)

24 59. Respondent Pharmacy is subject to disciplinary action under Code section(s) 4301(j)  
25 and/or (o), and 4305(b), for operating Respondent Pharmacy for more than 30 days without a  
26 pharmacist-in-charge, specifically, from February 20, 2017, through April 13, 2017, as described  
27 above in paragraph 39, and incorporated herein.

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1 NINETEENTH CAUSE FOR DISCIPLINE

2 (Respondent Merzheritsky-Unprofessional Conduct)

3 60. Respondent Merzheritsky is subject to disciplinary action under Code section(s)  
4 4301(j) and/or (o), and 4301(f) and/or (q), by providing false information during the 2015  
5 inspection as to the identity of the new pharmacist-in-charge, as described above in paragraph  
6 40(o), and incorporated herein.

7 TWENTIETH CAUSE OF ACTION

8 (Respondent Reznik-Unprofessional Conduct)

9 61. Respondent Reznik is subject to disciplinary action under Code section(s) 4301(j)  
10 and/or (o), and 4301(f) and/or (q), for making false statements during the 2015 inspection, and for  
11 concealing expired drug samples, prescription vials/bubble cards, and the 23 plastic bags  
12 containing dangerous drugs without any lot numbers or expiration dates, and providing false  
13 information to investigators, as described above in paragraphs 40(a), 40(b), 40(c), 40(d), 40(f),  
14 and/or 40(p), and incorporated herein.

15 OTHER MATTERS

16 62. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License Number  
17 PHY 46142 issued to Respondent Pharmacy, it shall be prohibited from serving as a manager,  
18 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
19 Pharmacy License Number PHY 46142 is placed on probation, or until reinstatement if Pharmacy  
20 License Number PHY 46142 is revoked.

21 63. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License Number  
22 PHY 46142 issued to Respondent Pharmacy while Respondent Merzheritsky was the owner, and  
23 had knowledge of or knowingly participated in any conduct for which the licensee was  
24 disciplined, Respondent Merzheritsky shall be prohibited from serving as a manager,  
25 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
26 Pharmacy License Number PHY 46142 is placed on probation, or until reinstatement if Pharmacy  
27 License Number PHY 46142 is revoked.

28 ///

1 DISCIPLINARY CONSIDERATIONS

2 64. To determine the degree of discipline, if any, to be imposed on Respondents,  
3 Complainant alleges that Respondent Pharmacy received a citation on June 28, 2013, for  
4 violations of Code section 4104(b) and Health and Safety Code section 11165(d), and was  
5 ordered to pay fines amounting to \$3,500, which Respondent Pharmacy paid. That citation is  
6 now final and is incorporated by reference herein. Respondent Pharmacy further received a  
7 citation on January 23, 2015, for violations of Code sections 4076(a), 4115(e), and 4342, Health  
8 and Safety Code section 11159.2, and California Code of Regulations, title 16, section 1715(b),  
9 and was ordered to pay fines amounting to \$2,250, which Respondent Pharmacy paid. That  
10 citation is now final and is incorporated by reference herein.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Board of Pharmacy issue a decision:

- 14 1. Revoking or suspending Pharmacy License No. PHY 46142 issued to LTC Geary  
15 Pharmacy (Respondent Pharmacy);
- 16 2. Revoking or suspending Pharmacist License No. RPH 69701 issued to Fanny Yan  
17 (Respondent Yan);
- 18 3. Revoking or suspending Pharmacist License No. RPH 29855 issued to John Lee  
19 (Respondent Lee);
- 20 4. Revoking or suspending Pharmacist License No. RPH 30987 issued to Terrance Chan  
21 (Respondent Chan);
- 22 5. Revoking or suspending Pharmacist License No. RPH 59724 issued to Brandon Carr  
23 (Respondent Carr);
- 24 6. Revoking or suspending Pharmacy Technician License No. TCH 54417 issued to  
25 Nelly Merzheritsky (Respondent Merzheritsky);
- 26 7. Revoking or suspending Pharmacy Technician License No. TCH 36890 issued to  
27 Yelena Reznik (Respondent Reznik);
- 28

1        8.     Prohibiting Nelly Merzheritsky from serving as a manager, administrator, owner,  
2 member, officer, director, associate, or partner of a licensee for five years if Pharmacy License  
3 Number PHY 46142 is placed on probation, or until reinstatement if Pharmacy License Number  
4 PHY 46142 is revoked.

5        9.     Ordering Respondent Pharmacy, Respondent Yan, Respondent Lee, Respondent  
6 Chan, Respondent Carr, Respondent Reznik, and Respondent Merzheritsky, jointly and severally,  
7 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this  
8 case, pursuant to Business and Professions Code section 125.3; and,

9        10.    Taking such other and further action as deemed necessary and proper.

10  
11 DATED: \_\_\_\_\_

4/9/18



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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